

1 IN THE UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 -----X
4 DOROTHY E. NICKLOFF,

5 Plaintiff,

6 vs.

7 LIGGETT & MYERS, INCORPORATED,
a Delaware corporation, BROWN &
8 WILLIAMSON TOBACCO CORPORATION,
a Delaware corporation, R. J.
9 REYNOLDS TOBACCO COMPANY, a New
Jersey corporation, and TOBACCO
10 INSTITUTE INCORPORATED, a Dis-
trict of Columbia corporation,

11 Defendants.
12 -----X

No. 71 1123 WMB

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13 Washington, D. C.

14 Monday, April 16, 1973
15

16 ---
17 DEPOSITION OF

18 KATHERIN REID GOLDEN
19 ---
20

21 REYNOLDS REPORTING ASSOCS., INC.
22 1730 RHODE ISLAND AVE., N.W.
WASHINGTON, D. C.
23 ---
24

25 Telephone: 633-3598
633-3599

TIFL 0503228

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOROTHY E. NICKLOFF,

Plaintiff,

-vs-

LIGGETT & MEERS, INCORPORATED,
a Delaware corporation, BROWN &
WILLIAMSON TOBACCO CORPORATION,
a Delaware corporation, R. J.
REYNOLDS TOBACCO COMPANY, a New
Jersey corporation, and TOBACCO
INSTITUTE INCORPORATED, a Dis-
trict of Columbia corporation,

Defendants.

No. 71 1123 WMB

Monday, April 16, 1973.

Washington, D.C.

Deposition of

KATHLEEN REID GOLDEN

a witness in the above-entitled matter, called for examination
by counsel for the plaintiff, pursuant to notice and agreement
of counsel, at the law offices of Covington & Burling, 898
16th Street, N.W., Washington, D.C., beginning at 9:30 a.m.,
before Melaigh H. Wilton, a Notary Public in and for the District
of Columbia, when the parties were represented by the following
counsel:

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BUTLER, JEFFERSON & FRY
By JAMES G. BUTLER, ESQ.,
and
MICHAEL A. K. DAN, ESQ.,
for the plaintiff.

WYMAN, BAUTZER, ROTHMAN & KUCHEL,
By FRANK ROTHMAN, ESQ.,
and
MARIANA PFABER, ESQ.,
for the defendant Tobacco Institute Incorporated.

SHOOK, HARDY, MITCHELL & BACON,
By WILLIAM W. SHINN, ESQ.,
for the defendant Brown & Williamson Tobacco Corp.

LAWLER, FELIX & HALL
By THOMAS E. WORKMAN, JR., ESQ.,
for the defendant R. J. Reynolds Tobacco Company

ALSO PRESENT:

JOHN J. QUINN, ESQ.; FRANCIS K. DECKER, JR.; ESQ.;
HERBERT DYM, ESQ.; ROBERT P. FRY, ESQ.; and
EDWARD J. JACOB, ESQ.

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C O N T E N T S

WITNESS:

EXAMINATION BY COUNSEL FOR:
PLAINTIFF

KATHARINE REID GOLDEN

4

E X H I B I T S

MARKED FOR
IDENTIFICATION

Plaintiff's Exhibit No. 1	46
Plaintiff's Exhibits No. 2-A, 2-B, 2-C; 3-A, 3-B, 3-C	53
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P R O C E E D I N G S

Whereupon

KATHRYN REID GOLDEN

a witness in the above-entitled matter, was called for examination by counsel for the plaintiff and, after having been first duly sworn by the Notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. DAN:

Q Would you please state your full name for the record?

A Kathryn Reid Golden.

Q By whom are you employed?

A The Tobacco Institute.

Q What is your business address?

A 1775 K Street, Northwest, Washington.

Q Your business phone number?

A 296-8434.

Q My name is Michael Dan. I am with the firm of Butler, Jefferson and Fry. We represent a certain plaintiff by the name of Dorothy Nickloff.

This is a deposition proceeding here today being taken pursuant to notice and stipulation and I would advise you that I am going to ask you questions as to facts and as to your position as custodian of records of the Tobacco Institute.

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I would ask that your answers be responsive; that if for some reason you don't understand one of my questions, please state so on the record so that I may rephrase the question and clear up whatever ambiguity may exist in your mind.

Would you do that?

A Yes.

Q I think it is fair enough that if you do answer a question that I then can assume that you have understood the question. So I wish you would bear that in mind in your responses.

Furthermore, the reporter at the end of the deposition will have it transcribed into a booklet form which will be submitted to you for your review and changes needed and signature before a notary and filing with the court.

I would request of you that that procedure also be done promptly.

Would you do so?

A Yes.

Q Also, you will notice the court reporter is taking down everything I say as well as everything you say and everything that any of the gentlemen and women in the room may say also. So as a consequence, be advised.

I would ask the reporter if you noted the appearances

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of everyone in the room here.

(Discussion off the record.)

BY MR. DAW:

Q Do you have a job title?

A Yes.

Q What is that?

A Office manager.

Q You are office manager of the Tobacco Institute,
Inc.?

A Yes.

Q For how long have you been their office manager?

A Since 1968, about the middle of 1968.

Q Are there any other office managers besides yourself
in the Tobacco Institute presently?

A No.

Q Who was the office manager before you?

A A Mrs. O'Toole.

Q For what period of time was she office manager?

A From 1958 until 1967.

Q Did you take the position after her?

A Yes. It was not called office manager at that time.

Q What was it called?

A Administrative assistant.

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Q Her superior?

A Mr. Kloepter.

Q Anyone else?

A No. I don't believe so.

Q If you recall anyone else, would you be kind enough to proffer that name?

A Yes.

Q Back to Number 4, have you brought any documents that meet the Request Number 4 with you?

A No.

Q You have not? Have you brought any documents to meet category number 4?

A No.

MR. DAN: For the record, I would like to indicate the witness is looking at a letter which I believe is a copy, I must have the original of a March 27, 1973, over the signature of Mrs. Pfaelzer.

MRS. PFAELZER: That is just a mistake because she wasn't asked to look at the letter. We were just shoving over the request. The letter won't tell her anything. I doubt if she has ever seen the letter.

BY MR. DAN:

Q You have brought nothing that meets category number 4?

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A No.

MR. ROTHEMAN: That is the fourth time.

BY MR. DAN:

Q Are there any letters of agreement, to your knowledge, between the Tobacco Institute and Hill & Knowlton?

A No.

Q Are there any contracts between the Tobacco Institute and Hill & Knowlton?

A No.

Q Are there any billings between the Tobacco Institute and Hill and Knowlton?

MR. ROTHEMAN: That is withdrawn. That request was withdrawn.

Q Are there any billings?

MR. ROTHEMAN: The request was withdrawn.

As I indicated to you earlier, we have made no inquiry to look for or seek out any information about requests you have withdrawn.

MR. DAN: I suspect as office manager this witness would have some smattering of knowledge and information of whether there is a financial relationship between Hill & Knowlton at one period of time and the Tobacco Institute.

MR. ROTHEMAN: Counsel, it seems to me that in order

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Q Was there an office manager or administrative assistant before Mrs. O'Toole?

A No.

Q What ~~is your job~~ function by definition?

A I don't quite understand.

Q What do you do?

A I am responsible for the financial records and general supervision of the secretaries and to see that the office functions smoothly so far as possible.

Q Do you have anything to do with the filing and retention of records?

A Yes. As supervisor of the secretaries and secretarial staff.

Q Do you have anything to do with the recall of records?

MR. ROTEMAN: I don't know what that means.

MR. DAN: By recall I mean the location and bringing of records to depositions such as this.

THE WITNESS: I still don't understand.

BY MR. DAN:

Q If there is a request made of you for a certain document, let's say for a financial statement of the Tobacco Institute, would you be the person involved in the Tobacco Institute to locate that document and bring it to whoever had requested

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it?

A Yes.

Q You said that there was no administrative assistant or office manager for the period 1954 to 1958. Is that correct?

A There ~~was~~ no Tobacco Institute in those years.

Q Mrs. O'Toole started when?

A 1958.

Q At the initiation of the Tobacco Institute?

A Approximately two or three months after.

Q Was there anyone that had the same responsibility you presently have in that two or three months?

A No.

Q Did Mrs. O'Toole have the same responsibilities and functions that you have been describing to us?

A In general, yes.

Q Did she have any different functions?

A I don't believe so.

Q Did she have any different responsibilities?

A No.

Q Where is Mrs. O'Toole now?

A In New Jersey.

Q Do you know where in New Jersey?

A I have her address:

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Q What is her address?

A I don't know it. I have it in the office.

Q Where in New Jersey?

A I am sorry. I don't recall that.

Q You don't recall her location whatsoever?

A No, I don't recall the exact name.

Q Did she retire? Why did she leave?

A She retired.

Q Is Mrs. O'Toole her maiden name or married name?

A Married name.

Q Is she presently employed by the Tobacco Institute?

A No.

Q Is she on a pension plan?

MR. ROTHMAN: Just a minute. The question is not relevant. I object to it on that ground and instruct the witness not to answer it.

BY MR. DAN:

Q What is Mrs. O'Toole's full name?

A Dorothy Atkins O'Toole.

Q Her husband's name?

A I have given you the wrong information. Her name is Ruark now.

Q O'Toole was her maiden name?

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A No. O'Toole was her name at the time she was with the Institute. She married when she retired. Her name is now Ruark.

Q What is her husband's full name?

A Robert Ruark.

Q So then to the best of your knowledge Mrs. Ruark has no ties or connections whatsoever with the Tobacco Institute, Inc.?

A No, she has not.

Q Is that the correct name for the entity you work for, by the way, Tobacco Institute, Inc.?

A The Tobacco Institute, Inc.

Q They pay your salary?

A Yes.

Q Have you brought any documents with you here today?

A No.

MR. ROTHMAN: We have brought the documents.

BY MR. DAN:

Q Were you supplied with a list of documents that you were to bring with you today?

A Yes.

Q Was that list a notice of taking deposition on oral examination and for production of documents and tangible things.

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A Yes.

Q Did that list contain a list of documents 1 through 103 with various sub-parts?

A Yes.

Q Did you make a search for some of the documents contained therein?

A Yes.

Q Did you make a search for all of the documents contained therein?

A No.

Q Where was the location of the documents, not right now, but then?

A In the files.

Q Where are the files kept?

A In the offices of the Institute.

Q Are there any records of the Institute kept not in these files?

A No.

Q Is the Institute on more than one floor?

A No.

Q What is the room called where these files are kept?

A The offices of the Institute.

Q Is it a special filing room?

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A No.

Q Are all of these documents kept in one room?

A No.

Q What other rooms are they kept in?

A The offices.

Q By offices, do you mean offices of the various personnel of the Institute?

A Yes.

Q Is there a central filing room?

A To a certain extent.

Q To what extent is the certain extent?

A There is one room that is used more than others for files. But there are files in all of the offices.

Q Are these the personal files of the employees?

A In some cases.

Q And in other cases?

A In other cases they are general files.

Q In other words, there would be files in Mr. Kornegay's office. Is that correct?

A Yes.

Q His office is at the Institute?

A Yes.

Q Mr. Wiscoffer has an office in the Institute?

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A Yes.

Q He would have files in his room?

A Not physically in his room.

Q Would Mr. Kloopfer have files physically in his room?

A No.

Q Where would these files be?

A In the secretary's office.

Q So the files have been kept by the secretaries to the gentleman?

A Yes.

Q This main filing room, does that have any specific number or designation?

A No.

Q If I called main filing room, would that be sufficiently specific for you to understand what I am talking about?

A I think so.

Q For any of these documents on the list of 1 through 103 would it be your testimony that these documents would only exist, if they are in the possession, custody or control of the Tobacco Institute at those headquarters located at 1776?

A I believe so.

Q Have you ever heard of documents of the Tobacco

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Institute being kept anywhere else other than at that location?

A No.

Q When a document is to be filed, is there any special procedure or standard by which it is put away? Do you have any organization system?

A No.

Q Do you keep your documents in folders?

A Yes.

Q Do you keep them in bound binders?

MR. ROTHMAN: The question is very general. What documents are you referring to?

MR. DAN: I want essentially to establish to begin with whether there is any kind of a system on how they file their documents.

MR. ROTHMAN: You put to her a question, documents in binders, and I suppose you have to explain what you mean by documents. There are 50 different kinds of documents.

MR. DAN: There could be 50 different kinds of binders. She can tell me whether she put any documents in the binders.

MR. ROTHMAN: I will object to the last question on the grounds it is ambiguous and I will ask you to reframe it.

BY MR. DAN:

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Q Are there any established procedures within the Institute for the filing of documents?

A By documents, do you mean pamphlets, correspondence?

Q By document I mean pamphlets, memos, letters, correspondence, any written representations. I do not mean film, tapes.

A Then your question is do we file any documents in binders?

Q No. My question is do you have any procedures for the filing of the documents?

MR. ROTHMAN: She answered that. She said no, there were no special procedures.

THE WITNESS: I don't understand.

BY MR. DAN:

Q Is your testimony you have no internal procedures set up for the filing of documents?

A If you mean formal procedures, the answer is no.

Q You have no written procedures?

A That is correct.

Q Do you have any rules and regulations governing how you file documents?

A No written rules and regulations.

Q Let's talk about informal rules. Do you have any

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informal rules and regulations as to how you file documents?

A Yes.

Q What are they?

A I wouldn't be able to be specific on that.

Q If you have a press release that has gone out from the Tobacco Institute, you do have press releases?

A Yes.

Q You want to file a press release after it has been put out, how do you do it?

A Normally it would go with other press releases in a folder of its own.

Q Where is that folder located?

A In the central files, so far as there are central files.

Q Are there specific filing designations for different kinds of documents, i.e., the press release folder?

A In some cases, yes.

Q Are there cases where you have specific folders for any information that has been placed in newspapers?

A Do you mean advertisements?

Q Yes.

A Yes.

Q Do you have an advertisement folder or folders?

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A No.

Q How are your advertisements retained?

A They are, when they have copies, retained in folders that indicate the specific ad.

Q Are all of the advertisements kept together in a group?

A I think so far as possible.

Q Are these in the central filing room?

A Yes.

Q How about contracts with public relations firms? Are these contracts kept together in one group?

A No.

Q Where are the contracts kept?

A The contracts would be kept in the folder of the company involved.

Q In that folder of the company involved would there also be the correspondence with that entity?

A As a rule.

Q Would there also be kept in that folder notes, internal notes and memoranda, dealing with that entity?

A If they are kept.

Q Are there occasions where they are not kept?

A Not to my knowledge.

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Q Are you saying to your knowledge internal memoranda are kept?

A No. I am not saying that.

Q Are internal memoranda kept?

A I can't say that they are in all cases. There is an effort to.

Q Is that part of good record keeping?

A Yes.

Q As custodian of records, and you are custodian of records for the Tobacco Institute?

A Yes.

Q Do you then have control and possession of these records?

MR. ROTHMAN: That is a legal conclusion. For the purposes of this deposition we are perfectly prepared to say she does.

BY MR. DAN:

Q Do you have an index system for your records?

A Do you mean a file master?

Q Sure.

A Yes.

Q Is that file master, how is it broken down, alphabetically, subject matter or how is it broken down?

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A By subject matter.

Q So for example, if I wanted to find out about dealings with Tide Rock Corporation, would that be the subject it would be under?

A I would think so. I can't remember them all.

Q If I wanted to find out about advertisements that would be placed what would be the subject matter for that?

A Advertisements I would think.

Q Are there within the subject matter broken down chronologically files?

A For some, yes.

Q Is there another list where documents are broken down chronologically?

A No.

Q What do you use for a retrieval system of documents?

MR. ROTHEMAN: I don't understand the question.

BY MR. DAN:

Q If you want to get a document out of the file, how do you do it?

MR. ROTHEMAN: With your hands?

THE WITNESS: It is manual retrieval.

BY MR. DAN:

Q How do you know where to find the document?

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MR. ROBINSON: Do you understand that question?

THE WITNESS: No. I don't.

BY MR. DUN:

Q If you want to find a contract with Hill & Knowlton, how do you go about finding it?

A I would look in the Hill & Knowlton folder.

Q If somebody who was unfamiliar with your filing system wished to find a Hill & Knowlton contract, how would they go about finding it?

A I don't know.

Q Would this index system of yours help?

A No.

Q Why wouldn't it?

A Because those would be kept with the financial records and there is no index for that.

Q These are the financial records of whom?

A Of the Institute.

Q The Institute's financial records are kept separate and apart from this subject matter breakdown of the filing?

A Yes.

Q Where are these financial records kept?

A In the offices.

Q In the central filing room?

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A No.

Q In what office?

A I don't understand.

Q Where are they located?

A Do you mean the individual's office?

Q I want to know where the financial records of the Institute are.

A They are in the offices of the Institute.

Q Where in the offices?

A Do you mean the individual's office?

Q If that is where they are kept, tell me what individual.

A They are kept in my office.

Q Are they kept anywhere else?

A No.

Q Are there any other records that are not kept according to this index system of the Tobacco Institute?

A I don't believe any of the individual offices which have files have master reference.

Q Does eventually these records in the individual offices work their way into the central filing system?

A Yes.

Q It is just a matter of time?

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14
A Yes.

Q So, in other words, the letter that is dictated today might be typed tomorrow and it will take "X" amount of time to reach the central filing system?

A That is right.

Q How long in the usual and ordinary course of events does that take?

A I would say it varies.

Q Give me some inner and outer limits.

A Say from one week to three to four months.

Q Do you have a disposal system of records; by that, I mean is there a period of time within which records are only kept and after that period of time they are disposed of?

A There is no definite policy as such.

Q Does the Tobacco Institute to your knowledge have with it or, pardon me, disposed of any of its records that once they have reached the central filing system?

MR. ROYCE: It is impossible to answer that question; have they disposed of any of their records? I don't know what you mean. It is an impossible question. You are going to have to define what you want to know about being destroyed. We don't want to misinterpret your questions. Records could be anything from a worksheet of an accountant to an advertisement placed in the newspaper.

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BY MR. DAN:

Q Are worksheets of accountants kept in the central filing system?

A No.

Q Once a record or a document, once a document, has reached the central filing system to your knowledge are those records disposed of?

MR. ROTEMAN: Is the question has the Institute in its history ever disposed of a document?

MR. DAN: No.

MR. ROTEMAN: What are you asking?

MR. DAN: I am asking for the period of time this lady has been an employee whether once the record has been filed in the central filing system if it later has been disposed of, if she knows.

THE WITNESS: I have been employed by the Institute since 1952. Of course they have.

BY MR. DAN:

Q Once they have reached the central filing system?

A Yes.

Q Do you have a specific period of time, like once a year you go through the records and you take out of date records out and throw them away? Is there some kind of procedure set up

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for doing that?

A No definite procedure.

Q Have you personally disposed of records that have been kept in the central filing system?

A No.

Q Who has? Can you think of an instance where anyone particularly has?

A Not a specific instance, no.

Q Can you think of and tell me a situation where it arises that you would be disposing of records?

MR. ROTHEM: Counsel, it seems to me we have been here now almost 35 minutes and we haven't even started on the deposition in terms of anything that is really meaningful. You have called for documents. Let's get to it. Whether they have destroyed documents in the past in the disposal system doesn't seem to be relevant unless they are documents you are calling for.

MR. DAN: Except to the extent that in your responses to the request for documents there were certain instances where you say these records don't exist. I think I am entitled to find out whether there is in fact a policy of the destruction of records and if there is a retention period of records.

MR. ROTHEM: She answered both of those questions. She said there is no definitive policy as to when documents are

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"disposed" of, whatever that word means. That is the state of the record. She said it. I didn't.

BY MR. DAN:

Q When a record is disposed of, does that mean throwing away or taken to another location for storage?

A No. Thrown away.

Q Are there any records stored in any area other than at the Tobacco Institute?

MR. FOTHEMAN: She answered that question clearly and concisely. The record is clear.

I don't mean to be interrupting your examination, but I just want to be sure we ask the question once, get one answer, and move on to the next one.

BY MR. DAN:

Q Is there a retirement policy of records rather than a disposal policy for records?

A I don't understand what you mean by that.

Q Active and dead folders?

A No.

Q Is there anyone else in the Tobacco Institute who has a like function as yours?

A Do you mean to supervise?

Q That is correct.

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A No.

Q I call your attention to Item No. 1, "True Magazine article entitled "To Smoke or Not to Smoke--That is Still the Question" by Stanley Frank; appearing on or about January, 1958.

Have you brought that document with you?

MRS. PFABLER: You withdrew that one.

BY MR. DAN:

Q Did you bring that document with you?

MR. ROTHMAN: We are proceeding on the basis that that document does not have to be produced.

MR. DAN: The document has not been produced?

MR. ROTHMAN: That was our agreement.

MR. DAN: You didn't bring it with you here today?

THE WITNESS: No.

BY MR. DAN:

Q To your knowledge, does the Tobacco Institute have under its custody, control or possession such a document?

A I was not asked to look.

Q To your knowledge does the Tobacco Institute have such a document?

MR. ROTHMAN: In fairness, just so we can get the ground rules set and pressed forward with our deposition, you have fairly and conscientiously, along with representatives of

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the Institute worked out certain procedures and ground rules by which we were going to proceed. There is a whole category of areas in which we have agreed that documents need not be produced. In those categories we have neither lent our time nor efforts to locating any documents or going into them. We assumed, and I think assumed fairly, that they were not going to be the subject of this deposition. Documents falling within the category you are now inquiring about were the subject of an agreement that they need not be produced. It seems to me that ought to dispose of the problem for this deposition.

I assumed that the reason they need not be produced is that in most instances you already have these documents.

MR. DAN: Agreed that there was a good faith attempt I think on both sides to limit the amount of documents that need be produced today. But by the same token, I feel we have a right to inquire of the witness as to whether in fact she knows if the Institute has certain documents so if in a later period of time we should reach a stage where we should be requesting them we would not have to go through the preliminary matters.

MR. POWERS: Isn't the basis of this stipulation that the documents need not be produced because of the fact you have the documents already?

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MR. DAN: Not for every single one, no.

MR. ROTTMAN: What is the basis of the agreement on document request Number 1?

MR. DAN: That it need not be produced.

MR. ROTTMAN: Why are we proceeding to go into it?

MR. DAN: I want to find out if it exists within the Tobacco Institute, if she knows.

MR. ROTTMAN: I am telling you that the witness did not look for any of the documents that we told her she need not produce. We would be wasting our time. If you want to ask her the question, she simply is going to tell you she didn't look for them. We are wasting our time. If you want to do that, let's do it.

BY MR. DAN:

Q Prior to the working out of this agreement, this agreement took place in the latter part of February 1973, had you seen the list of 1 to 103 documents with various sub-parts?

A I can't recall.

Q Were you ever instructed or requested to ascertain whether a document such as I just read to you existed within the confines of the Tobacco Institute, "To Smoke or Not to Smoke" article?

A Not that I can remember.

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Q So then you don't know whether they have the document or not?

A No.

MR. ROTHEIM: So it will help you, I want you to move as quickly as you reasonably can, this witness has only been asked to assist in the location of those documents which we have agreed will be produced. She has not been asked to look for any documents which we agreed need not be produced. It seems like our time would be better spent.

BY MR. DAN:

Q Before coming to this deposition, did you talk to anyone concerning the content of your testimony other than your lawyers?

A No.

Q Have you looked at any documents prior to coming here today for the purpose of reviving your memory or refreshing your memory as to your testimony here today?

A I don't quite understand.

Q Did you look at any documents prior to coming here today which would have assisted you in your testimony here today?

A The documents that I produced.

Q Only those documents?

A I think so.

TIFL 0503258

Q Is there a corporate scheme of authority in the Tobacco Institute?

MR. ROTHMAN: Let me see if I can understand that question.

MR. DAN: Who is her superior?

MR. ROTHMAN: Let me see if I can understand that question. We are here talking about jurisdiction and documents. She has been established as the custodian of the records. We have agreed to that. Now what is the relevancy of her superior either on the question of the custodian of the records or on the question of jurisdiction? I have no objection to her answering the question, but I think we ought to set the ground rules so we know where we are going.

MR. DAN: I merely want to find out who her immediate superior is and who is the person that takes her place when she is not here and that is it.

MR. ROTHMAN: You are entitled to that.

BY MR. DAN:

Q Who is your immediate superior?

A Mr. Kornegay.

Q Is there a person who takes your job function when you are not in the office, on vacation or sick leave?

A To a certain extent.

TIFL 0503259

Q Who would that be?

A Mrs. Hilderly.

Q What is her first name?

A Donna.

Q Is she also located at the Tobacco Institute, Inc.?

A Yes.

Q Is there someone below you in the scheme of authority and responsibility, directly below you?

A What do you mean?

Q Is there someone that you have assisting you in what your job function and role is?

A I just said Mrs. Hilderly.

Q What would be her, also?

A Yes.

Q Let's go to request number 4. "All contracts between the Tobacco Institute, Inc. and its public relations firm, Hill & Knowlton." Have you produced any documents contained within that category?

MR. ROSEN: Counsel, would you have any objection, Sir, I would like to direct this to you, too, as you could well understand the lawyers pretty much have assisted in the putting together of this mass of information. It would seem to me if you have no objection, you would get a lot more meaningful

TIFL 0503260

answers out of Mrs. Frazler as we started through these categories. What we did is just went through with the custodian and pulled all of these records into a meaningful manner.

I offer that for your benefit, not for the witness's.

MR. BUTLER: Why don't we stay with this method for a little bit and see how we get along with it? I want the record to clearly establish that these are in fact business records taken from the business records of the corporation and that they are complete business records.

MR. ROTHMAN: You can have it your way. I won't assist the witness. I think you will find my offer was a generous one. Let's go.

MR. BUTLER: It is not that I deny it is not generous. I simply feel I want to see how far we get this way.

BY MR. DAN:

Q All the records you have brought with you here today, these were taken from the files of the Tobacco Institute?

A That is correct.

Q Were all of these records kept in the central filing system or were any of these in the other personnel offices?

A I am trying to remember what was produced.

Q If there is any financial records here, we can assume

TIFL 0503261

they were not kept in the central filing system?

A That is correct.

Q Can you recall any other records that you have brought with you here today that were not kept in that central filing system?

A Yes.

Q What would those be?

A There were some letters that were produced from other offices.

Q Do you recall whose offices those were?

A No. I don't.

Q With correspondence, actual letters going out from the Institute, are all of these letters kept -- I will break that down.

Are they first retained by the Institute? The copies?

A Retained for how long?

Q I am asking are they first retained?

A Yes.

Q Every single one?

A No.

Q Why are there some letters that are retained and some not?

MR. ROSENBERG: Just a moment. Individuals might have

TIFL 0503262

their own particular personal letters they send. How would this witness know why people kept copies of correspondence? You can ask her if there are any procedures that are established. It seems to me that what individuals might do with their correspondence is outside of her competence.

BY MR. DAN:

Q Are there any procedures established as to the retaining of letters?

A No.

Q To your knowledge are all pieces of correspondence, the copies of those, retained?

A I don't know.

Q Are there individual, personal files for each of the officers of the Tobacco Institute?

A I don't know.

Q Do you know generally what correspondence is retained? Are there any categories that would not be retained?

A I don't know on that.

Q Who would know?

A I would suppose the individual secretaries. But I don't know.

Q Are there any policies in the Tobacco Institute that you are aware of that say that certain letters and correspondence

TIFL 0503263

should not be retained in central files?

A No.

Q To your knowledge is there any policy within the Tobacco Institute that certain categories of documents should not be retained in the central files other than financial documents?

A I don't know.

Q Who would know the answers to those questions?

A There again, the individual.

Q If Mr. Kornegay would write a letter to the Federal Trade Commission, is there a policy involved with the retention of that letter?

A Yes.

Q What is that policy?

A It would be retained.

Q With that kind of meaning in mind, would there be any kind of letters that Mr. Kornegay would write in his professional capacity as an employee of the Tobacco Institute that would not be retained?

A I don't know.

Q Do you keep a daily document log?

A No.

Q Are there any policies whereby letters coming into

TIFL 0503264

the Tobacco Institute, correspondence, documents, coming to the Tobacco Institute are filed?

A Do you mean if there is no answer made?

Q Whether an answer is made or not. Let's take the first category where an answer is made.

A Your question is is there a definite policy on that?

Q Yes.

A No.

Q Is there an informal policy?

A I don't believe so.

Q What is done with the letter physically -- I don't want the minute steps, but just generally -- a letter comes in addressed to Mr. Kornegay and a response is made thereto. What happens to that letter that came in?

A I don't know.

Q Is the letter, after response is made, then given to his secretary?

A Yes.

Q Does the secretary then give the letter to you or does she file it?

A She would file it.

Q Does she have discretion on whether to file that letter in the wastebasket?

TIFL 0503265

A I don't know.

Q As office manager, if you became aware of the fact that a secretary was disposing of letters in such a manner, would that be proper procedure?

MR. ROTHMAN: I object to the question and instruct the witness not to answer.

BY MR. DAN:

Q Has it ever come to your knowledge and attention that any of the personnel were disposing of letters incoming to the Tobacco Institute?

A I don't think I quite understand what you are saying.

Q Have you ever learned that any particular personnel of the Tobacco Institute were disposing of letters and correspondence without filing them?

MR. ROTHMAN: Just a moment, counsel. I think there is developing in the line of inquiry a potential sinister connotation. Let's clarify that right now. Are you including in your question the possibility that a secretary may have received a personal invitation for her boss to go to a charitable party and she throw that in the basket? Is that considered a disposal of a document or are you talking about throwing away the bulk mail, letters that are received by his secretary every day of her life for her boss?

TIFL 0503266

MR. DAN: We will exclude bulk mail and we will exclude personal correspondence of a social nature.

MR. ROTEMAN: What does that leave in your mind?

MR. DAN: Official Tobacco Institute business.

MR. ROTEMAN: I don't know what that is.

MR. DAN: Whatever the nature and the purpose of the Tobacco Institute is and the documents that come pertaining thereto.

MR. ROTEMAN: I don't know what that means. If somebody sends in an inquiry to the Tobacco Institute asking them what its address is, is that an official document?

BY MR. DAN:

Q Back to request number 4 --

MR. ROTEMAN: Thank you.

BY MR. DAN:

Q Have you brought any documents in response to request number 4?

A No.

MR. ROTEMAN: Who are you directing that to?

MR. DAN: The custodian of records.

MR. ROTEMAN: So you understand, I respectfully suggest, although we will do it Jim's way, you direct that to the people who know.

TIFL 0503267

EX MR. DAM:

Q Did you have a list that you worked from in obtaining these records and bringing them here today?

A Yes.

Q Do you have that list with you?

A No.

Q Who would have that list?

A It is in the office of the Tobacco Institute.

Q Did you make notation on that list to see whether you had the documents?

A Yes.

Q Did you look at that list before coming here today to make sure all of the documents on that list you were supposed to bring were in fact being brought?

A No. I did not.

Q That list was merely a working tool for you?

A That is right.

Q Who assisted you in gathering the documents? Did you gather the documents by yourself?

A Not entirely.

Q Who else gathered the documents with you?

MR. ROWMAN: I think he is asking what lawyers helped you.

TIFL 0503268

A Covington & Perlberg helped.

BY MR. DAN:

Q Did any other lawyers assist you?

A I can't recall. Mrs. Pfaelzer did. She went over the list and told me what you wanted. I can't remember all of this.

Q Did any other employee of the Tobacco Institute other than lawyers assist you in the gathering of the documents to bring here today?

A Yes. At my direction.

Q Who were those employees?

A In any of the offices.

Q Who were the employees? Give me their names?

A Mrs. Cohen.

Q First name please?

A Mrs. Janet Cohen.

Q Who is her immediate superior?

A I am. Miss Jan Rathovich.

Q Who is her superior?

A Frank Welch.

Q Who is Frank Welch?

A He is a vice president.

Q Is that an official title?

A Yes.

TIFL 0503269

Q Is he vice president of anything or the Tobacco Institute, Inc.?

A He is vice president.

Q Who else?

A Mrs. Hilderly.

Q First name, please?

A Donna.

Q Who is her immediate superior?

A In this case, I was.

Q Is she a secretary?

A Yes.

Q Who is she a secretary to?

A Earl Clements.

Q Who is Earl Clements?

A He is a past president of the Institute.

Q Is he still employed by the Institute?

A Yes.

Q In what capacity?

A As a consultant.

Q He is salaried?

A Yes.

Q Does he have an office there?

A Yes.

Q Who else?

TIFL 0503270

A Mrs. Pat Carson.

Q Who is her immediate superior?

A Mr. Kornegay.

Q Anyone else?

A Yes. Miss Judge.

Q First name?

A Mary Jean.

Q Her superior?

A Mr. Dryden.

Q What is Mr. Dryden's title?

A He is a senior vice president.

Q First name?

A Franklin.

Q Does he have any specific title as senior vice president, like senior vice president of marketing or anything like that?

A No.

Q Just senior vice president?

A Yes.

Q How long has he been with the Tobacco Institute?

A Since I believe 1967.

Q Did anyone else assist you?

A Yes. Mrs. Parrish, Mrs. Norma Parrish.

TIFL 0503271

to make some orderly sense out of where we are going, if you have withdrawn a request we ought not to be inquiring into the subject matter of that request. What does it mean to withdraw a request if we are going to sit here now for two hours talking about withdrawn material?

MR. DAN: That means you didn't have to produce the document. That was done hopefully to convenience your client so they wouldn't have to put forth thousands and thousands of burdensome documents.

Are there billings kept from Hill & Knowlton and the Tobacco Institute for a period of time?

THE WITNESS: Yes.

BY MR. DAN:

Q These would be where? In the Tobacco Institute?

A With the financial records.

Q That is not in the central filing or anywhere else?

MR. ROTHMAN: I will not permit that anymore. Let's get with it.

MR. DAN: Are you instructing her not to answer?

MR. ROTHMAN: Yes. On the grounds it is about eight times asked and answered.

BY MR. DAN:

Q Request Number 5, "All contracts between Tide Rock

TIFL 0503274

Corporation and the Tobacco Institute, Inc." Have you brought any documents in response to said request?

A Yes.

Q Would you kindly show me the document?

A Yes.

MR. DAN: Could we have that marked as Plaintiff's Exhibit No. 1 for identification?

(Plaintiff's Exhibit No. 1 was marked for identification and is attached hereto.)

BY MR. DAN:

Q These aren't originals of the documents?

A No.

Q You have brought photocopies today for the purpose of the deposition?

A That is correct.

Q You don't have to take these back to the files? You have provided us with photocopies for this very purpose?

MR. ROTHMAN: We haven't provided you with photocopies. We have provided the court reporter photocopies.

MR. DAN: I mean for the original deposition?

MR. ROTHMAN: Yes.

BY MR. DAN:

Q This document we have just marked as Plaintiff's

TIFL 0503275

Exhibit Number 1 for identification, is that termed, "a letter of agreement?"

MR. ROTHMAN: Is that what?

MR. DAN: Termed a letter of agreement?

MR. ROTHMAN: What does it say?

MR. DAN: I haven't seen it yet.

MR. ROTHMAN: It is what it says it is. That document, Exhibit 1, is what we are supplying to you pursuant to your request within the category you are now questioning. It is what it is.

MR. DAN: Within that category it says produce contracts, including letters of agreement.

MR. ROTHMAN: We have produced for you everything we think falls within that category. We are giving you the benefit of all doubts.

BY MR. DAN:

Q Category Number 6, have you brought a list of articles from 1958 to date?

A No.

Q Did any list ever exist, to your knowledge?

A No.

Q You have told us that there is advertising retained by the Tobacco Institute, have you not?

TIFL 0503276

A Yes. What is an advertising list?

Q A list of advertising. Okay?

A Okay.

Q You have told us there is a folder which contains, or some form, this advertising is retained in. Is that correct?

A Yes.

Q Is there any kind of a face page to that which describes what is contained in that folder?

A No.

Q There is nothing at all which indicates, like a table of contents?

A No.

Q They are all in there loose. Is that correct?

A Yes.

Q Number 8, do you have that in mind, in front of you, Request Number 8?

A Yes.

Q You are not to produce any documents. But first of all, I would ask you, are there any contracts --

A No.

Q Let me finish the question. The manufacturing defendants in this case are Liggett & Myers, Brown and Williamson Tobacco Corporation and R. J. Reynolds. Do you know whether

TIFL 0503277

there are any contracts between and amongst these defendants, either individually or as a group, and the Tobacco Institute, Inc.?

MR. ROTHMAN: Let me see if I can understand that question. What is the relevancy of that towards the issue of jurisdiction?

MR. DAN: I want to see if there is an agency developed relationship.

MR. ROTHMAN: What does that have to do with jurisdiction?

MR. DAN: It has to do with the fact that maybe they are an arm and instrumentality of the corporate defendant.

MR. ROTHMAN: I don't know what that means.

MR. DAN: As such they act for each other, one answers for the other.

MR. ROTHMAN: That doesn't flow from an agency. That is a rule of law I have never heard of before.

MR. DAN: I am assuming that if they are an instrumentality under the complete direction and control of either the manufacturing defendants individually or in concert then in truth and in fact and law they are not a separate entity.

MR. ROTHMAN: That is a lovely platitude, but it doesn't mean anything in law. The question is what does the

TIFL 0503278

relationship between the parties in terms of existing contractual relationship, which I am only talking about for the purposes of discussion, assuming there is one, for discussion only, what is the relevancy of that to the issue of California jurisdiction?

MR. DAN: Because the entities may not be different.

MR. ROTHMAN: The entities may not be different?

MR. DAN: Although a firm called the Tobacco Institute, Inc. exists, that may be a sham.

MR. ROTHMAN: Then you are not talking about an agency anymore, you are talking about something else.

MR. DAN: That is right.

MR. ROTHMAN: Let's look at your pleadings and see where we talk about a sham. How is that relevant in this case?

MR. DAN: Because we are talking about --

MR. ROTHMAN: We are making it up as we go along, aren't we, counsel?

MR. DAN: No.

MR. ROTHMAN: That is all right. I will let the question be answered. You have beat me down.

BY MR. DAN:

Q Do you know of any contracts between and among the manufacturing defendants and the Tobacco Institute?

TIFL 0503279

A No.

Q Do you know if there is any financial arrangement between these manufacturing defendants, either individually or in concert, in the Institute?

MR. ROTEMAN: I don't know what financial arrangement is.

BY MR. DAN:

Q Do any of these manufacturing defendants donate money to the Institute?

MR. ROTEMAN: That is not relevant, counsel. That doesn't go to the question of sham or anything else you are talking about. I will instruct the witness not to answer it.

BY MR. DAN:

Q I take it the Tobacco Institute is a non-profit organization?

A That is right.

Q Do you know who funds them, how the salaries are paid, where the money comes from?

MR. ROTEMAN: It is not relevant. I will instruct the witness not to answer it. When I say not relevant, what I mean in fairness is, it is not relevant to the issue of jurisdiction.

BY MR. DAN:

TIFL 0503280

Q Does the Institute get donations so as to assist in its work?

MR. ROTEMAN: Same objection. Same instruction.

Jim, so it will satisfy you we are not trying to be evasive here, as we proceed through this request, there is a list of all the members of the Tobacco Institute that you have called for and we will soon be presenting that list to you, if you would ever get to it. I might respectfully suggest to you if you get through your documents you might have most everything you are looking for rather than doing it in this somewhat disjointed manner.

You are going to get all of this if you just get through the list.

BY MR. DAN:

Q Have you brought with you a list of the present board of directors of the Tobacco Institute, Inc.? That is Number 9.

MR. ROTEMAN: You want the present board?

MR. DAN: We asked for a list of the present board of directors and 9(a), a list of the board of directors as of 1968; and 9(b), as of 1970.

MR. ROTEMAN: We have it all.

MR. DAN: We will mark these as plaintiff's next in

TIFL 0503281

order, please.

As Number 2, a list of board of directors as of this date; 2-B is a list as of 1970, and as to 2-C, a list as of 1968.

(Plaintiff's Exhibits No. 2-A, 2-B and 2-C were marked for identification and are attached hereto.)

BY MR. DAN:

Q Have you brought with you a list of corporate officers of the Tobacco Institute, Inc., Request Number 10, as well as 10(a), a list of corporate officers of the Tobacco Institute, Inc., as of 1968, and 10(b), a list of corporate officers of the Tobacco Institute, Inc. as of 1970?

A Yes.

Q Can we please have marked as plaintiff's next in order, A being the 1973 list, B the 1970 list, and C the 1968 list?

(Plaintiff's Exhibits No. 3-A, 3-B and 3-C were marked for identification and are attached hereto.)

BY MR. DAN:

Q As to Request Number 11, do you know what the Counsel for the Tobacco Institute, Inc. dash USA is?

A That is 11, Counsel for Tobacco Institute, Inc.

MR. ROSENMAN: What is the question?

TIFL 0503282

Q Do you know what they are? Is it a corporation, what is it? What is the form?

A I think that means Council for Tobacco Research.

MRS. PFELZER: There is no such thing as the "Council for Tobacco Institute, Inc."

BY MR. DAN:

Q There is a Council for the Tobacco Institute, dash, USA?

A Not dash USA.

Q What is the Council for Tobacco Research?

MR. ROTHMAN: Do you mean is it a partnership, corporation, a sham, limited partnership or corporation?

MR. DAN: Yes.

THE WITNESS: It is a corporation aside from the Tobacco Institute that has no relation to the Tobacco Institute.

BY MR. DAN:

Q Do they share an office?

A No.

Q Do they share secretarial personnel?

A No.

Q Do you know if they share funding?

A No.

Q Do you know who funds the Council for Tobacco Research?

TIFL 0503283

A No.

Q Did they used to be called the Tobacco Institute Research Committee?

A No.

Q Did they use to have a prior name? Did they have a prior name at one time?

A I believe that this is a prior name.

Q What is the present name?

A I believe it is Tobacco -- I can't recall.

Q Would it be the Tobacco Institute Research Committee?

A No.

Q Do you keep a file on it at the Tobacco Institute, Inc.?

A I believe so.

Q This is in the central filing?

A Yes.

Q Would the name of the file be the Council for Tobacco Research?

A I don't know.

Q Do you know if this council prepares news releases or press releases?

A I can't remember.

Q Have you produced Request 11(c), a document entitled "The Cigarette Controversy: Eight Questions and Answers"?

TIFL 0503284

MR. ROTHEMAN: Yes.

THE WITNESS: Yes.

MR. DAN: Please mark that as plaintiff's next in order.

(Plaintiff's Exhibit No. 4 was marked for identification and is attached hereto.)

MR. ROTHEMAN: Because of the absolute fairness of the Tobacco Institute, we will not only give you what you called for, but we will give you all versions of it. There are three versions of it.

MR. DAN: Thank you. We will then have these marked as A and B.

(Plaintiff's Exhibits No. 4-A and 4-B were marked for identification and are attached hereto.)

BY MR. DAN:

Q Did you produce the documents called for in Request Number 41, "In the affidavit of Horace R. Kornegay in Support of Motion to Dismiss of Defendant the Tobacco Institute, Inc. a pamphlet is mentioned in paragraph 3; plaintiff requests that you produce that pamphlet as well as a list of distribution to individuals in California as well as any cover letter or note accompanying said pamphlet as well as any documents,

TIFL 0503285

letters, memos, correspondence, dealing with said pamphlet."

MR. ROTHEMAN: The pamphlet has already been marked pursuant to 11(c). There is the mailing list and there is the covering letter.

MR. DAN: We will mark this as plaintiff's next in order.

(Plaintiff's Exhibits No. 5-A and 5-B were marked for identification and are attached hereto.)

MR. ROTHEMAN: With respect to Exhibit 5-B which we are producing pursuant to a Request Number 41, that is the only list we have. I don't mean to suggest it is totally complete. I don't have any information one way or the other as to whether it is or not. That is the only one we have.

BY MR. DAN:

Q Going to Request Number 12, have you brought with you any documents which would fit the description of a curriculum vitae for William Klopfer, Jr.?

A Yes.

MR. DAN: Can we please have that marked as plaintiff's next in order?

MR. ROTHEMAN: Could I make a suggestion? Why don't I mark them and then we will give them all to the reporter and he can officially mark them at the end. We will go a lot faster.

TIFL 0503286

(Discussion off the record.)

(Plaintiff's Exhibit No. 6 was marked for identification and is attached hereto.)

BY MR. DAN:

Q Request Number 13, have you produced any ads which appeared in the newspapers under the auspices of the Tobacco Institute, Inc.?

A Yes.

MR. ROTHMAN: I will mark as Plaintiff's Exhibit Number 7 the Home News, New Brunswick, New Jersey, May 4, 1970; I will mark as 8, the Washington Post, Wednesday, October 18, 1967. I will mark as 9, New York Times, November 24, 1969. I will mark as 10, Broadcasting, March 17, 1969, and 11, Washington Post, December 1, 1970; 12, United States Tobacco Journal, August 5, 1971; 13, The Nation, November 13, 1972.

(Plaintiff's Exhibits No. 7 through 13 were marked for identification and are attached hereto.)

MR. ROTHMAN: May I also now take the liberty of making one correction which I think is the appropriate time.

Mr. Hennegay's affidavit, we have now found an additional advertisement which should have been included in that affidavit and we will mark that 14.

TIFL 0503287

(Plaintiff's Exhibit No. 14 was marked for identification and is attached hereto.)

MR. ROEMER: It is entitled, "Fred Panzer, January 15, 1971." Exhibit 14 is the addendum to the Kornegay affidavit. I think with respect to Exhibit 14, in order to clarify the record, also, the ad which actually appears on the exhibit is a microfilm which did not come from the files of the Tobacco Institute. The only document that was in the Tobacco Institute file was the five-line document which is attached to Exhibit 14. But in an effort to give you everything we made a private search of the microfilm files of the New York Times and in making that private search of the microfilm files of the New York Times, we found the document which is alluded to. In the spirit of full discovery, we gave it to you.

BY MR. DAN:

Q Are any documents or files of the Tobacco Institute kept on microfilm?

A No.

Q Are any of them kept in computer banks?

A No.

Q Do you have any film strips or films that are made and kept?

A Do you mean of records?

TIFL 0503288

Q First of records?

A No.

Q To your knowledge has the Tobacco Institute made any films, motion pictures?

A I believe so, yes.

Q Where would these be kept?

A In the files. I think public relations has the communications area.

Q Is this in the same building?

A Yes.

Q Is there a public relations department?

A Communications. Yes.

Q The official title is communications?

A Yes.

Q They, to your knowledge, do have the films, or motion pictures, there?

A Not to my knowledge. But I don't know.

Q Do you recall whether the Tobacco Institute has shot any motion pictures, or have had shot for them any motion pictures?

A I believe so.

Q Do you recall the subject matter?

A No.

TIFL 0503289

Q Do you recall the number?

A No.

Q Does the Tobacco Institute keep any of their records on tapes?

A No.

Q Does the Tobacco Institute list any computer banks that are not their own for retaining information?

A No.

Q Request 13(a), in Request 13(b), I will ask counsel.

Have these requests been met in Request Number 13?

MR. ROTHEMAN: They have.

MR. DAN: Request 14 and 14(a), have you produced any documents which fulfill that request?

MR. ROTHEMAN: They have been covered already.

MR. DAN: Request Number 15(a), "Each and every contract between each and every public relations firm located in California either by way of branch office, affiliate, head office, is paid by, corresponds with, or has liason with, or contracts with the Tobacco Institute, Inc."

MR. ROTHEMAN: I will mark as Exhibit 15 a letter from Braun and Company, June 7, 1963; 16, Braun and Company, July 10, 1963; 17, Braun and Company, June 27, 1965; 18, a letter from Kornegay to Braun, no date, three pages; Exhibit

TIFL 0503290

19, Braun and Company, December 17, 1971; 20, Braun and Company, January 5, 1972.

(Plaintiff's Exhibits No. 15 through 20 were marked for identification and are attached hereto.)

BY MR. DAN:

Q Request 16(a), have you brought with you a reprint of an ad appearing in the New York Times of 1969 entitled, "After 15 Years of Trying, Nobody Has Induced Lung Cancer in Animals with Cigarette Smoke. We Believe that Anti-cigarette Theory is a Dum Rap"?

MR. ROTEMAN: This is not even our ad. But it does seem to be basically what you are looking for. Although it is not the Tobacco Institute's. It is 21.

(Plaintiff's Exhibit No. 21 was marked for identification and is attached hereto.)

BY MR. DAN:

Q Did that come from the Tobacco Institute files?

A I don't know. I didn't produce that.

MR. ROTEMAN: We reached a little farther to help you, counsel, than we had to. But Judge Burn will appreciate that.

BY MR. DAN:

Q Do you know who got this ad for you?

TIFL 0503291

A No.

MRS. PFABLER: I did.

BY MR. DAN:

Q Do you know where it came from?

A No.

MR. ROTHEMAN: I should indicate to you, I am not trying to be facetious, Exhibit 21 is not a Tobacco Institute document.

MRS. PFABLER: But we agreed to produce it. So we looked for it.

MR. DAN: Where did you get it from?

MR. ROTHEMAN: I assume it came from The American Tobacco Company. I don't know. It is their ad.

MRS. PFABLER: One of the executives in the Institute had a copy of it by chance. So you have it today.

MR. DAN: Do you know that executive's name?

MRS. PFABLER: I haven't been sworn, counsel.

BY MR. DAN:

Q In Exhibit Number 15, the last page is a letter dated June 10, 1963, over the signature of T. W. Braun, which states, "As mentioned in my letter to you of June 7, 1963, enclosed are the brief history of Maloy, Belknap and Haffner."

Did you bring those enclosures with you?

TIFL 0503292

A No.

Q Do you know where the enclosures would be?

A No.

Q Would they be in the Braun -- is there a separate file for Braun and Company?

MR. ROTEMER: She said she didn't know where they were.

BY MR. DAM:

Q Is there a separate file for Braun and Company?

A I don't know.

Q Where did you get this letter from, what file?

A That is one that Miss Rathovick produced for me.

Q She got it from the Tobacco Institute files?

A Correct.

Q Would this have been one of the files in the central filing room?

A No.

Q Where is this file kept?

A In Miss Rathovick's office.

Q Who is she the secretary to?

A Mr. Welch.

Q What is Mr. Welch's position?

A He is a vice president.

TIFL 0503293

MR. ROSENMAN: He was 20 minutes ago, too.

BY MR. DAN:

Q What is Mr. Welch's job as vice president?

MR. ROSENMAN: What is the relevancy?

MR. DAN: I am trying to get at finding where these enclosures are.

MR. ROSENMAN: She said she didn't know where the enclosures were. She got the document from Mr. Welch's secretary.

If you are anxious to get the enclosures, we will make every effort to get them for you.

MR. DAN: Can we have them?

MR. ROSENMAN: I don't know. We will look for them. When we find them, we will let you know. We will make every effort to find them. I don't know if we have them.

BY MR. DAN:

Q Is Mr. Welch in charge of legislative activity in California or for California?

MR. ROSENMAN: I will object on the grounds I don't see the relevancy. In California?

MR. DAN: For California.

MR. ROSENMAN: I withdraw the objection.

THE WITNESS: I don't know.

TIFL 0503294

BY MR. DAN: Does he deal generally with state legislation?

A I believe so.

Q Does he deal with generally matters of interest to the Tobacco Institute emanating from California?

MR. ROTHMAN: I will object to the form of that question because I don't know what matters of general interest emanating from California means.

BY MR. DAN:

Q Are you familiar with the smoking dog study?

A To some extent.

Q If that study had come out of the University of San Francisco Medical School, would this be something that Mr. Welch would have interest in?

MR. ROTHMAN: I will object on the grounds it is beyond the competency of the custodian of the records. It calls for a conclusion.

MR. DAN: She is also the office manager.

MR. ROTHMAN: It is also beyond the competency of the office manager.

BY MR. DAN:

Q Do you open the mail when it comes to the office in the morning?

TIFL 0503295

MR. ROTEMAN: What mail?

BY MR. DAN:

Q Does any mail come to the office in the morning of the Tobacco Institute?

MR. ROTEMAN: Why don't you put the question to her that you intend to put to her?

BY MR. DAN:

Q Does mail come addressed to Mr. Frank Welch of the Tobacco Institute, Inc. with a California postmark on it?

A I don't know.

Q Do you open the mail?

MR. ROTEMAN: Mr. Welch's mail?

BY MR. DAN:

Q Do you open the mail as office manager?

MR. ROTEMAN: I am trying to impede you. Are you asking her whether she opens all of the mail or Mr. Welch's mail or other kinds of mail?

MR. DAN: We are talking about Mr. Welch.

MR. ROTEMAN: Does she open Mr. Welch's mail?

MR. DAN: That is correct.

THE WITNESS: No.

BY MR. DAN:

Q Do you sort the mail to give it to the other secretaries?

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when it comes into the office?

A It is sorted.

Q Is it sorted by you?

A No.

Q Do you have anything to do at all with sorting the mail or opening the mail or transporting it to the various secretaries?

A No.

Q Request Number 17, any and all releases of the Tobacco Institute, Inc. wherein it states "To Draw a Meaningful Parallel Between Human Smoking and Dogs Subjected to These Most Stressful Condition".

MR. ROTEMAN: Marked as Exhibit Number 22 under the title the Tobacco Institute, February 5, 1970.

(Plaintiff's Exhibit No. 22 was marked for identification and is attached hereto,)

MR. ROTEMAN: I think technically the exhibit I have just given you, 22, does not fall within the definition of a release, but out of the same degree of kindness and solicitation we gave it to you.

BY MR. DUN:

Q Request Number 18, have you brought anything that fulfills this request: Each and every survey which has been

TIFL 0503297

cited by the Tobacco Institute, Inc. showing that smokers are usually energetic, marry more often, drink more liquor and black coffee than non-smokers.

MR. ROSEMAN: Marked as Exhibit 25 a voluminous document prepared by Dr. Lillienfeld; as Exhibit 24, the Annals of Internal Medicine, October 1960; 25, British Medical Journal, February 11, 1961; 26 article by Clark W. Heath, February 1958; 27, New England Journal of Medicine, February 4, 1971; 28, Dr. C. David Jenkins, an article by Dr. Jenkins; 29, an article by Joseph Matarazzo, University of Oregon Medical School; 30, Harvard University, Charles McArthur.

(Plaintiff's Exhibits No. 23 through 30 were marked for identification and are attached hereto.)

BY MR. DAN:

Q In these exhibits, 23 through 30, did they come from the Tobacco Institute files?

A Yes.

Q Do you know specifically for any of these articles, Exhibits 23 through 30 for identification, if these articles were in any way supported by the Tobacco Institute, Inc.?

MR. ROSEMAN: Supported by the Tobacco Institute?

MR. DAN: Yes, funding? The original research, do you know if the original research was funded?

TIFL 0503298

MR. ROTTMAN: Objection, it is not relevant to the issues of jurisdiction. The witness is instructed not to answer.

BY MR. DAN:

Q Do you know if the printing in the secretarial assistance for the ultimate publication of these articles was provided by the Tobacco Institute, Inc.?

MR. ROTTMAN: Same objection and same instruction. We have nothing to do with the Harvard Medical School. But these are not relevant to jurisdiction. We are not going to answer it on that ground.

BY MR. DAN:

Q Has the Tobacco Institute, Inc. made reprints of these Exhibits 23 through 30?

MR. ROTTMAN: Let's assume for the purposes of discussion only, because I don't want to object if I am missing something, let's assume for the purposes of the discussion only that they did reprint. How is that relevant?

MR. DAN: Were the reprints distributed in the State of California?

MR. ROTTMAN: Let's put it that way. I will let you compound the question in the interest of time. Did you make any reprints for California? That would be fine.

THE WITNESS: I don't know.

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BY MR. DAN:

Q Have you made any reprints?

She said she doesn't know.

MR. ROSENMAN: Go ahead.

THE WITNESS: I don't know.

BY MR. DAN:

Q Have you produced any documents which fall under Request 18(a), any and all surveys or news releases or ad or any other document wherein the Tobacco Institute, Inc. concluded smokers are different kinds of people who are perhaps more susceptible to sickness?

I note in Mrs. Pfaltzer's letter to me she has indicated documents need not be produced. However, quite frankly, it was my understanding that they would be produced if they are in the client's custody, possession or control. That is my letter to you of February 26, '73.

MRS. PFALTZER: I will have to tell you I disagree with you about that because you withdrew that one.

BY MR. DAN:

Q Do they exist? Do you know?

A No. I don't know.

Q Request Number 19, Curriculum Vitae for Horace R. Hornaday, President of the Tobacco Institute, Inc.?

MR. ROSENMAN: We will mark it 31.

TIFL 0503300

(Plaintiff's Exhibit No. 31 was marked for identification and is attached hereto.)

BY MR. DAN:

Q Request Number 21, any and all correspondence received by the Tobacco Institute, Inc. from John E. Moss. Have you brought any documents for that request?

A No.

Q Do you know if such documents are within the possession, custody or control of the Institute?

A We found none.

Q You looked for some?

A Yes.

Q But you couldn't find any?

A That is right.

MR. ROTTMAN: Do you want to extend the courtesy to your associate to identify himself, put his name on the record?

MR. DAN: Sure.

May the record indicate Dr. Robert P. Fry has just walked in.

MR. ROTTMAN: I understand Dr. Fry is an attorney and represents the plaintiff.

MR. FRY: Mr. Fry on the record.

BY MR. DAN:

TIFL 0503301

Q We are inquiring as to the search made for Request Number 21. You did make a search for some documents from John E. Moss?

A Yes.

Q Do you know who John E. Moss is?

A Former congressman.

Q Would there be a separate file with his name on it as far as correspondence from John E. Moss in your formal record-keeping practices?

A I don't know.

Q The Institute, I take it, does receive correspondence from time to time from congressmen, does it not?

A Yes.

Q Is there any system as to how that correspondence is filed?

A What do you mean by system? A definite, set out policy?

Q How do you file it? Is it subject matter, is it by his name, is it by the date it came in, is it by the letter that goes out if there is a response?

A It could be by either subject or name.

Q Did you check both by subject and name?

A Yes.

TIFL 0503302

Q As far as correspondence from John E. Moss?

A Yes.

Q What subject did you check under?

A I did not check by subject, no, because I didn't have any subject connection. I checked by name.

Q Are letters from congressmen usually and ordinarily when filed with the Institute filed by subject rather than by name?

A Yes.

Q Are there any particular congressmen upon which you have files which are kept by name?

A Yes.

Q Are any of those California congressmen?

A I don't know.

Q The same for senators?

A I don't know.

Q Request Number 22, any and all correspondence received from Senator Moss of Utah by the Tobacco Institute, Inc.?

MR. ROTHMAN: Marked as 32, a letter from Senator Moss dated October 16, 1967 and as 33, a letter from Senator Moss dated March 28, 1969.

(Plaintiff's Exhibits No. 32 and 33 were marked for identification and are attached hereto.)

TIFL 0503303

BY MR. DAN:

Q Request Number 24, have you produced any documents contained within said request?

MR. ROTMAN: Marked as 34, a letter from Dean Birch dated December 23, 1970.

(Plaintiff's Exhibit No. 34 was marked for identification and is attached hereto.)

BY MR. DAN:

Q Any others?

A No.

Q Request Number 25(a), have you brought any documents in response to said request, "A list of copies distributed of the magnificently illustrated historical treatise entitled, 'Tobacco and Americans'".

MR. ROTMAN: Marked 35, a document entitled, "State Tobacco Administrators."

(Plaintiff's Exhibit No. 35 was marked for identification and is attached hereto.)

BY MR. DAN:

Q In response to Request 25(d) --

MRS. SPANGLER: No, (b).

BY MR. DAN:

Q -- "a kit distributed to enable young scientists to

TIFL 0503304

grow their own tobacco varieties from seeds."

A Yes.

MR. ROTHMAN: Marked Number 36.

(Plaintiff's Exhibit No. 36 was marked for identification and is attached hereto.)

BY MR. DAN:

Q 26(d), have you brought with you any documents entitled, "Each and every publication entitled, 'Tobacco and Health Research'".

MR. ROTHMAN: Yes.

BY MR. DAN:

Q Are sub (d), (e) and (f) all contained within production here?

MR. ROTHMAN: Yes. Do you want to mark it all separately?

MR. DAN: Right. Starting with 37.

MR. ROTHMAN: 37 is the "Tobacco and Health," October '57; 38 is "Tobacco and Health," January, February '58; 39, Atlantic, December '67; 40, an article by Dr. Haag; 41, "Tobacco and Health, May-June '58; 42, "Tobacco and Health," September-October '58; 43, "Tobacco and Health," January-February '59; 44, "Tobacco and Health," May-June '59; 45, "Tobacco and Health," November-December '59; 46, "Tobacco and Health," June-July '60; 47, "Tobacco and Health," October '60; 48, "Tobacco and Health,"

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April-May '61; 49, "Tobacco and Health," August '61; 50, "Tobacco and Health," December '61; 51, "Tobacco and Health," July '62; 52, "Tobacco and Health," September-October '62; 53, "Tobacco and Health," December '62; 54, "Tobacco and Health," March-April of '63; 55, "Tobacco and Health," July-August '63; 56, "Tobacco and Health," November-December '63; 57, "Tobacco and Health," March-April of '64; 58, "Tobacco and Health," September-October '64; 59, "Tobacco and Health," winter '64 and '65; 60, "Tobacco and Health," Fall of '65; 61, "Tobacco and Health," fall of '67; 62, "Tobacco and Health," winter of '67-'68.

(Plaintiff's Exhibits No. 37 through 62 were marked for identification and are attached hereto.)

BY MR. DAN:

Q Can you identify in these documents, Plaintiff's Exhibit 37 through 62 for identification which of the quarterly publications entitled, "Tobacco and Health" research were sent to physicians around the country by the Tobacco Institute, Inc. by and through its public relations firm, Hill & Knowlton, if any indeed were sent by Hill & Knowlton?

A I don't know.

MR. DAN: Can you assist me?

MRS. SPANGLER: No. We have no way of telling. We produced all of the issues of it. That is the best we can do.

TIFL 0503306

So the response is not particularized on (e).

BY MR. DAN:

Q Is there anyone in the Tobacco Institute that would know?

A I don't know.

Q Was there any particular gentleman in the organization who dealt with Hill & Knowlton?

A The president.

Q At that time the president was whom?

A That is '59, mostly, wasn't it?

MR. BUTLER: '57 through --

MR. ROTHMAN: My understanding is Hill & Knowlton is a New York agency. I don't know what that has to do with our case.

MR. DAN: My understanding is Hill & Knowlton is a public relations firm hired by the Tobacco Institute.

MR. ROTHMAN: In New York.

MR. DAN: That they sent these publications to physicians throughout the country.

MR. ROTHMAN: You will have to ask Hill & Knowlton.

MR. DAN: Maybe she knows. I am trying to find out who is the gentleman who deals with Hill & Knowlton so I don't have to talk to them.

TIFL 0503307

MR. BUTLER: Those years were '57 through '62, excuse me, as late as '67-'68.

THE WITNESS: Your question?

BY MR. DAN:

Q Who is the gentleman within the Tobacco Institute whose job it was to deal with Hill & Knowlton?

A The president, as a rule.

Q In those periods of time it was who?

A James P. Richardson from '59 to late '61, I believe it was, and George V. Allen from that time, late '61, through March of '66, I believe.

Q After March of '66?

A Earl Clements.

Q Until when?

A I believe about January of '70. But I am not sure.

Q Who are the Tobacco Information Committee?

A I don't know.

Q Have you ever heard that name before?

A I may have. I don't recall.

Q Would it refresh your memory if I showed you Exhibit 37 and note it states, "Tobacco and Health" published by the Tobacco Information Committee, representing tobacco manufacturers, growers and warehousemen?"

TIFL 0503308

A No. I wasn't with the Institute at that time and I don't recall.

Q Which file did you get those from? I am referring to Exhibits 37 through 68.

A I didn't produce those.

Q Who produced them for you, please? Who brought them to you so you could bring them here today?

MRS. PFABLER: Counsel, I directed them to take out of the files of the Institute all of those copies for you.

MR. DAN: I would just like to have the file identified.

MR. ROTEMAN: She says she is unable to do that.

MRS. PFABLER: It is not a file. They are all kept together, Tobacco and Health report research. All of those were together.

MR. DAN: In whose office?

MRS. PFABLER: I asked for them. They were produced. That is all.

BY MR. DAN:

Q Were you asked by someone to produce these?

A No. I was not.

Q Where would those files be kept that these 37 through 68 came out of? Where did they come from?

TIFL 0503309

MRS. PFAELSER: They keep these publications together, counsel. They have a volume of those publications. They are kept in the central file area. That is the answer. I asked to have them all brought in while she was sitting there with me. They were all brought in. There is nothing sinister about it.

BY MR. DAN:

Q If these were all brought in with you sitting right there, who brought them in?

A I can't remember, frankly.

MRS. PFAELSER: There were several people there. I asked somebody to go get them. I don't know what is so sinister about all of this,

MR. ROTHMAN: Where are we?

MR. DAN: We are moving on.

BY MR. DAN:

Q Request Number 29(a), "The Tobacco Reporter, the issue of August, 1970."

MR. ROTHMAN: Mark it 63.

(Plaintiff's Exhibit No. 63
was marked for identification
and is attached hereto.)

BY MR. DAN:

Q 29(b), have you brought any documents in response to said request, any ads, memos, letters, correspondence or other

TIFL 0503310

documents in relation to any ads placed in The Tobacco Reporter by the Tobacco Institute, Inc. of any of its public relations arms?

MR. ROTHMAN: That was given to you in response to your Request Number 13.

MRS. PFABER: You only asked for the ads. You were given all of the ads.

MR. DAN: I agree.

MRS. PFABER: All of the ads are in 15.

BY MR. DAN:

Q Request Number 30, have you produced any text of any speeches from '70 through '72, as well as any correspondence, and/or notes pertaining thereto?

A Yes.

MR. ROTHMAN: Let's mark as 64 the remarks of Mr. Kornegay on November 11, 1972; 65 is a Scotch magnetic tape which complies with the request and I am handing you the original tape, which is the only one we have, and so it goes. And the balance of the request in this category will be marked 66, a letter from Mr. Klopfer to Samuel Jones, dated January 20, 1971; 67, a letter from Samuel Jones to Klopfer, January 12, 1971; 68, a letter of Samuel Jones to Dr. Huebner, January 12, 1971; 69, Kelly to Kornegay, January 11, 1972; 70, Kornegay to Kelly,

TIFL 0503311

February 4, 1972; 71, Kelly to Kornegay, July 27, '72; 72, Kornegay to Kelly, July 26, '72.

(Plaintiff's Exhibits No. 64 through 72 were marked for identification and are attached hereto.)

BY MR. DAN:

Q Request Number 30(a), "The text of any and all such appearances by members of the Tobacco Institute, Inc. as referred to in No. 30 above." That was included in response to Request No. 30?

MR. PFAELZER: Yes. While we are not mentioning it, bear in mind you asked for the speeches for '70 through '72. That is what you got.

BY MR. DAN:

Q Do you have the text of any speeches for the period earlier than 1970 at the Tobacco Institute, Inc.?

A I don't know. I wasn't asked to search.

Q Do you know if they exist?

A No. I don't.

Q Did you search for these particular speeches yourself?

A Yes. But I looked only in those years.

Q In the usual and ordinary course of business do you

TIFL 0503312

keep copies of the speeches that are given?

A Yes, if we have them.

Q When does the situation arise when you don't have a copy of a speech?

A If a gentleman makes an extemporaneous speech.

Q That would be like an informal speech. I am talking about a formal invitation to speak where a representative of the Tobacco Institute gives a speech, is a copy then made of that speech?

A You mean in all cases?

Q The usual and ordinarily.

MR. ROTHMAN: I don't know what usual and ordinarily mean. I assume the answer is sometimes they keep them and sometimes they don't. That is probably the real answer.

BY MR. DAN:

Q Is that what your answer would be?

A Yes. I would think so.

Q In the period prior to 1970 when there would be a formal invitation to speak to a member of the Tobacco Institute, Inc., would there be occasions arising where there would be reprints made of speeches made?

A I don't know.

Q Do you know if reprints are ever made of speeches of

TIFL 0503313

members of the Tobacco Institute?

A Do you mean copies of the actual speech rather than reprints? Yes.

Q Do you know if there are any such reprints earlier than 1970?

A No. I don't.

Q Would they be in the same files that you searched to bring forth these speeches?

A Possibly.

Q How were these speeches kept? What files were they kept in, referring to Numbers 64 through 72?

A I am sorry. I have forgotten your question.

MR. ROTTMAN: Where did they come from?

BY MR. DAN:

Q What files?

A Dr. Welch's were in his office files. I quite frankly don't know where Dr. Huebner's tape was.

Q Are the appearances and the speeches that are given by members of the Tobacco Institute, if there are any reprints or texts of such speeches existing, are these usually and ordinarily kept in their individual offices or in the central filing system?

A Usually in the central filing system.

TIFL 0503314

Q So, for example, for speeches by Mr. Kornegay, if they had a period in California in the period earlier than 1970 or Mr. Klopfer appeared earlier than 1970, in the first place you would go to look in the central filing system?

A Yes.

Q Would this be under subject matter or under the individual's name, Mr. Kornegay's or Mr. Klopfer's name?

A Under the individual's name.

Q Do you have a separate file entitled "Speeches of" or something similar to that?

A Yes.

Q This would be for them, for each of the members of the Tobacco Institute? By that, I mean by members, I mean officers.

A If they have made speeches, yes.

Q Would all of their speeches, as many as have been retained or transcripts or reprints made thereof, would all of these then be contained in one file for however long they were with the Tobacco Institute?

A Yes.

Q So if I was interested in obtaining all of the speeches, the texts thereof, and public appearances by Mr. Klopfer, let's say, from the time he joined the Institute until

TIFL 0503315

the present date, you would just have to go to the one file for Mr. Klopfer?

A Yes.

MR. DAN: We have come to the documents covered by the stipulation. Have you had an opportunity to go over this?

MRS. PFÄELZER: Yes. I am prepared, if you want me to, to speak on each one of these for her. I think that would be a lot faster. You asked us to state whether they were in our files, whether they were authentic. I can make a statement as to each one.

But you should do it however you want to.

MR. DAN: That is fine with me. Maybe we had better do it serially.

MRS. PFÄELZER: However you want to do it. You requested it and we did it. However, counsel, on the record let me say it is going to be much, much quicker for everybody if you let me state as to the stipulation items what she and I have worked together on.

MR. DAN: Certainly. Let's do it as quickly as possible. Do you have a statement to make for the record?

MRS. PFÄELZER: You have not made up your mind apparently whether you want to do it number by number,

MR. DAN: I want you to do it all at one time. Can

TIFL 0503316

you do it that way quickly?

MRS. PFABLER: Yes. Go with me on the record.

MR. DAN: Request Number 31.

MRS. PFABLER: If you will leave it to me, I will do the stipulation items right now. 31 is in our file. It is not an Institute document. As far as we can tell, the copy you have is correct. But we cannot authenticate it because it is not our document. We just have a copy of it.

MR. DAN: Request Number 31 referred to "The remarks of Joseph L. Cullman, III to the Overseas Press Club of New York City on April 30, 1970 concerning 'The Effects of Cigarette Smoking Upon Dogs.'"

MRS. PFABLER: Could I say one thing. This is not my examination. It is yours. But what I am trying to point out is there is no, it doesn't seem to me there is any reason to read the entire request in each case, is there? I can simply take the number and sub-part thereof and go through and tell you exactly what we are able to state on each one without reading the description of it.

MR. DAN: Is it all right if I mark the exhibit number?

MRS. PFABLER: That is my thought. Just to repeat, on 31 --

TIFL 0503317

MR. BUELER: You don't have to repeat.

MRS. STAMMER: The same is true of 31(a) which is that we have a document like that in our file. It is not an Institute document. Therefore, we cannot authenticate it, but it appears to be correct.

MR. DAN: Request Number 31 is Plaintiff's Number 73.

(Plaintiff's Exhibit No. 73 was marked for identification and is attached hereto.)

(Discussion off the record.)

MR. DAN: For the record, Plaintiff's 73 for identification is pages 1 through 15 of the document.

MR. ROTHMAN: What would be helpful for us, as you mark these documents, if you could tell us where they came from. We don't know what they are. We have never seen them before.

The point is that you have documents which you are in the process of marking. We would like to be sure we have an expressed understanding that documents will be left with the reporter today, that they will be made a part of the deposition just as our documents are made a part of the deposition. We have that understanding?

MR. BUELER: We have that understanding. We also have, according to my understanding with Michael, that the Xerox facilities of Covington & Burling would be made available if

TIFL 0503318

we wanted to make copies so we can have copies made here before we deliver them. I am not sure we have copies of each of these documents.

MRS. PFABER: I had that arrangement with counsel, and that is true.

MR. ROTHMAN: Secondly, it seems to me it would help us and save us the problem of deposing you to find out where these documents came from so we can determine what they are.

MR. DAN: I don't know.

MR. ROTHMAN: They are in your file. You know where you got them.

MR. DAN: They came out of this blank binder.

MR. ROTHMAN: Where did the blank binder come from?

MR. DAN: I gave you an honest answer.

MR. ROTHMAN: I want to make sure we have our record clear now. I take it the state of the record is all three members of your firm are here, Mr. Fry, Mr. Butler is here, Mr. Dan is here, and you are telling us that you do not know where the documents came from that you are using in this deposition?

MR. BUTLER: No. There is no representation of that nature at all. Mr. Dan said he doesn't know where the documents came from, period. I don't think there is anything incumbent upon us to tell you where we have documents, the source of any

TIFL 0503319

documents we have in our file at this point in this proceeding.

MR. ROTEMAN: That isn't quite true. We are being asked now and in an effort to move this along have been asked to authenticate certain documents. Obviously, if those documents let me make an assumption for the purposes of making my point clear, suppose those documents were stolen. We should not be obligated to authenticate stolen documents.

MR. BUTLER: Do you have any thought that perhaps these were stolen?

MR. ROTEMAN: No. I was giving you only a position for argument purposes. It seems to me before I am asked to authenticate I have a right to ask you where they came from. If they came to you properly, fine. If they came to you improperly, we should know that.

MR. BUTLER: I don't think this is the proceeding to do that.

The stipulation, as I understand it, it covers documents which have been discussed mutually by counsel and there was never any question about the source of them. If there is some question, we can cover that in a separate proceeding. I don't think this is the time to do it.

MR. ROTEMAN: I take it on the state of the record you are graciously refusing to tell us where you got the documents from?

TIFL 0503320

MR. BUTLER: At this point I think it is immaterial.

MR. ROYMAN: I don't care whether it is material or not. Are you refusing to tell us?

MR. BUTLER: I don't think I have to refuse or not at this point. I am not under oath. I am not having my deposition taken. We are talking about the identity of certain documents in the file. That is all.

MR. ROYMAN: I am again, so there will be no misunderstanding, making a request of Mr. Butler, Mr. Dan and Mr. Fry to advise us as we go through these documents what the source of those documents are, how they came into your possession, whether lawfully or unlawfully.

MR. BUTLER: We have no spirit of abject cooperation with respect to that request.

MR. ROYMAN: That is quite apparent.

MRS. PFÄELER: This is the third request of that nature. I have made that request once on the telephone with Mr. Dan, I made that request in our five-hour conference we had with respect to the documents that was held in your office, and I was told repeatedly that the source would not be divulged. So let the record show this is not the first request.

MR. BUTLER: At least the record shows that you say so.

TIFL 0503321

MR. ROTEMAN: Is there anything incorrect about what she said?

MR. BUTLER: I wasn't there. She is making certain assumptions. We don't have to answer every assumption she makes.

MR. ROTEMAN: Mr. Butler, I have known you long enough so you will not misinterpret what I am saying now. I hope you will not misinterpret it. But the source of these documents can be a major issue in questions as to the authenticity, relevancy, and admissibility. We are now here in a deposition on records. I have quite seriously given you many documents that were technically not within the call in an effort to give you the information.

It seems to me that while we are all in Washington, all counsel have made a trip here, that we ought to be in a position where you can tell us, since I am confident you must not have done anything wrong in obtaining those records, where the records came from.

MR. BUTLER: We are not prepared at this point to get into that area at all.

MR. ROTEMAN: All right. The question in my mind suddenly -- this is what I didn't want you to misinterpret -- of morality and ethics and the manner in which those documents

TIFL 0503322

were obtained becomes even more severe than they were when I sat down there ten minutes ago and you are leading me to those conclusions.

MR. BUTLER: You are entitled to have any feelings you want as we may also entertain those from time to time ourselves on morality and ethics.

MR. ROTENMAN: All right, sir.

I might say, because I think we are now on a very, very important issue, that with respect to our stipulations as to authenticity, which Mrs. Pfaelzer will soon be making with you it must be clearly understood for the record that we are not, by stipulating to the authenticity of any document, waiving the issue as to how they came into the possession of plaintiff's counsel, whether they are lawfully in plaintiff's counsel's possession and what flows from our finding if finding be such that they did not lawfully come into your possession. So we do not waive anything by stipulating that they are authentic. It must be understood.

MR. DAN: I would say in regard to that is that when the stipulation was entered into, as to these documents and their authenticity, that it was my understanding that this was done for the convenience of the Tobacco Institute since we had already supplied them with copies in an appendix to a motion

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to produce that had been made so as not to burden them in searching through the files to pull them out to bring them here and we are attempting to compare them as earlier and as easily as possible.

MR. ROSEMAN: We are going to meet our commitment to you. We will not back off of that. But I want you to clearly understand that in light of the way this dialogue has gone for the last ten minutes and the refusal to tell us where those documents come from, despite the fact we will be stipulating to their authenticity, we are not waiving the right to later question their admissibility, their relevancy, and anything else that flows from what may have happened if these were not properly in your possession.

MR. DAN: I would suggest in that regard that at the time of the making of the stipulation there was no reservation expressed whatsoever as to whether in our discussion here today through the witness as to their authenticity there would be any cutting back from the thrust of whether they are indeed authentic or not. It seems to me the proceedings here today and the stipulation were to find out that fact, whether they were authentic, genuine and true and correct without any reservation as to later admissibility. Relevancy, of course, is an issue of jurisdiction. That was my only understanding

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of the reservation made.

MR. ROSENMAN: I don't know what you just said. That is because I apparently don't understand what you are trying to say.

MR. DAN: At the time of this stipulation, there was no reservation made as to these documents except possibly as to whether they were relevant. That was the only issue that would have been raised as to whether they were properly before the court.

MR. ROSENMAN: Do you mean if those documents were stolen out of the Tobacco Institute we have no right to raise that issue?

MR. DAN: I don't raise that point.

MR. ROSENMAN: That is the point I raised.

MR. BUTLER: Let's take a moment.

(Thereupon, a brief recess was taken.)

BY MR. DAN:

Q As to Request Number 31, the remarks of Joseph Cullman which are 73; Request 31(a) is 74; Request 31(b) is Plaintiff's Exhibit 75.

(Plaintiff's Exhibits No. 74 and 75 were marked for identification and are attached hereto.)

MRS. WEINER: With respect to 31(b), those are

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authentic and correct.

MR. DAN: What about Number 74, 31(a)?

MR. ROTHMAN: That is authentic and correct, too.

MRS. PFANLZER: No. I have already spoken to 31(a).

MR. ROTHMAN: That is our document.

MRS. PFANLZER: That is (b).

MR. ROTHMAN: That is authentic, also.

Off the record.

(Discussion off the record.)

MR. ROTHMAN: For the record, 74 and 75 are authentic and correct; 73 comes from our files. It is not our document. We cannot stipulate to its authenticity.

MR. DAN: For the sake of expedition of the proceedings, let's go on to Request Number 32(c).

MR. ROTHMAN: That has already been given to you under our response to 13.

MR. DAN: As to Request Number 33(c), a list of all of the papers where an ad entitled, "After Millions of Dollars and Over Twenty Years of Research: The Question About Smoking and Health is Still a Question." It is my understanding that no such list exists?

MRS. PFANLZER: Wait just a minute. You have skipped 33(b).

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MR. LAW: Pardon me.

MRS. PFAELEER: We have a copy of an ad that falls in the category of 33(b) which we are now producing.

MR. ROTHMAN: That will be 76.

(Plaintiff's Exhibit No. 76 was marked for identification and is attached hereto.)

MRS. PFAELEER: As to 31(c), we do not have the list.

MR. DAN: 33(c)?

MRS. PFAELEER: Yes.

MR. DAN: 35(a)?

MR. ROTHMAN: 77, a document entitled, "Smoking/Health, an Age-Old Controversy"; 78, "...Some Facts About Tobacco...".

(Plaintiff's Exhibit No. 77 and 78 were marked for identification and are attached hereto.)

MR. DAN: 35(b), the flyer entitled, "Smoking/Health, an Age-Old Controversy."

MR. ROTHMAN: I just gave that to you.

MR. DAN: 35.

MR. BUTLER: What is the agreement that they are authentic?

MR. ROTHMAN: We are not involved in that.

35.

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MR. DAN: Employment list of individuals of the Tobacco Institute.

MR. ROTHMAN: 79.

MR. DAN: Is 79 for May 11, '72?

MR. ROTHMAN: Yes, and 80 is for January 3, 1972; 81, May 10, '71, documents by the way which I don't see any relevancy to whatever.

(Plaintiff's Exhibits No. 79, 80 and 81 were marked for identification and are attached hereto.)

MR. ROTHMAN: I want the judge to know if we ever have to talk to him about it that we are supplying all of these things with not a bit of relevancy to them.

MR. DAN: 37?

MR. ROTHMAN: 82.

(Plaintiff's Exhibit No. 82 was marked for identification and is attached hereto.)

MR. DAN: 38?

MRS. PFÄELZER: The witness states to you that there are no liabilities in California.

BY MR. DAN:

Q Can you so state?

A Yes, I can.

Q Did you examine any documents to ascertain that fact?

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A Yes, I have checked the records.

Q What records did you check?

A Our billing records.

Q Where are those billing records located?

A In my office.

MR. ROTHMAN: Separate from the central files.

BY MR. DAN:

Q Do those billing records include phone calls?

A Yes.

Q Are there phone calls made to California from the Tobacco Institute?

MR. ROTHMAN: Is your question are there records in the Tobacco Institute of phone calls to California? Telephone bills, is that what you are talking about?

MR. DAN: Yes.

MR. ROTHMAN: Do you know how to answer that?

THE WITNESS: No. I don't.

BY MR. DAN:

Q You don't know whether there is any billing record in the Tobacco Institute for phone calls?

A Yes.

Q Are there phone calls made to California from the Tobacco Institute, Inc.?

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MR. ROTHMAN: She said she didn't know.

BY MR. DAN:

Q Is that your testimony, you don't know?

A Yes.

Q Does the Tobacco Institute receive phone calls from California?

A There again, I don't know.

Q Have you ever called California while being employed there on office business?

A Not that I can remember.

Q Have you ever received a phone call from California while employed?

A Not that I can remember.

Q Request 40.

MRS. PFAELEER: 15(a), already produced.

MR. ROTHMAN: Part of 15(a).

MR. DAN: 41, we have already covered that in 5(a) and 5(b).

MRS. PFAELEER: We produced it as part of 11(c).

MR. DAN: As part of Request 11(c).

42?

MR. ROTHMAN: We produced it as part of 13.

MR. DAN: 43?

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MR. ROEMMAN: Produced as part of 13.

MR. DAN: 44?

MR. ROEMMAN: Produced as part of 13.

MR. DAN: 45?

MR. ROEMMAN: Produced as part of 13.

MR. DAN: 46?

MR. ROEMMAN: 46 is Exhibit 83.

MR. DAN: 47?

MR. ROEMMAN: 84.

(Plaintiff's Exhibits No. 83 and
84 were marked for identification and are attached hereto.)

MR. DAN: This member list for the Tobacco Institute, Inc., Plaintiff's Number 84. Is this a membership list as of the present date?

THE WITNESS: Yes.

BY MR. DAN:

Q Do you happen to know if the membership was the same at the time you joined the Tobacco Institute?

A I don't believe I can remember that. That is a long time.

Q Was American Tobacco Company with them when you joined?

A I don't remember.

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Q 487

MR. DOWLER: Excuse me. Before you get into that.

BY MR. DAN:

Q When you joined the Tobacco Institute, in regard to Exhibit Number 34, was Brown and Williamson Tobacco Corporation a member of the Tobacco Institute?

A I don't know.

A Was Liggett and Myers, Inc.?

A I really don't know which of the present members were member at that time.

Q Was R. J. Reynolds?

A I don't know.

Q As to those three companies, do you recall if they joined at a time subsequent to your employment with the Tobacco Institute?

A No. I don't recall.

Q You have no memory whatsoever on the subject?

A No. I don't.

Q Number 487

MR. ROTHEMAN: 48 represented articles, clippings, Exhibit 35, Los Angeles Times, March 19, 1970, two pages; 36 Los Angeles Times, January 31, 1972, two pages; 37, Los Angeles Times, January 21, 1972; 38 Salt Lake Tribune, December 17, '70;

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39, San Francisco Chronicle, September 26, '70; 90, San Francisco Chronicle, July 4, 1970; 91, Billings Gazette, January 4, 1971; 92, Sacramento Bee, December 20, '71; 93, Sacramento Bee, March 27, '72.

(Plaintiff's Exhibits No. 85 through 93 were marked for identification, and are attached hereto.)

MR. DAN: It is my understanding you were to produce "representative clippings forwarded to the Institute in the period 1970 through 1972, inclusive.

MR. ROTMAN: That is what we did.

MR. DAN: Have you produced the "Statement of Functions as to what the agency does" to be covered in any letter of retention and so will be produced in response to other requests? Has that been covered?

MRS. PTABLER: Certainly. You have all of the letters of retention. They state what the functions are.

BY MR. DAN:

Q Miss Custodian, was it you that went through the clippings to ascertain which were representative clippings?

A No. Counsel.

Q Is there a separate file where these clippings came from?

A No.

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Q Did you examine any of the clippings that were not brought here today?

A No.

Q Do you know whether you received information from the public relations firms hired that deal with legislation, not clippings?

MR. ROFFMAN: I missed the question. Who is going to repeat it?

MR. DAN: I am.

BY MR. DAN:

Q The requests as originally stated called for a list of all documents, clippings forwarded to the Tobacco Institute from the public relations firms that it hired. Then an agreement was made to have representative clippings for the period '70 through '72.

MR. ROFFMAN: Right.

BY MR. DAN:

Q Were there any clippings forwarded to the Tobacco Institute from its public relations firms that it has hired other than newspaper articles? I believe all of these are newspaper articles.

MRS. PRANSKY: Clippings are newspaper clippings. I am the one who picked out the representative clippings. I

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don't know what you are talking about now.

BY MR. DAN:

Q Did these public relations firms ever send you pieces of proposed legislation?

A I don't know.

Q Send it to the Tobacco Institute?

A I don't know.

Q 49?

MRS. PFALLER: That is the stipulation.

MR. DAN: Pardon me. I didn't think so. Request Number 49, document will be produced.

MRS. PFALLER: The fact of the matter is, we have it right here.

MR. ROYMAN: What is 49?

MRS. PFALLER: You have that, counsel. We will produce it anyway.

MR. DAN: The "Smoking/Health" background notebook which was sent to editorial writers sometime in April 1971.

MR. ROYMAN: That will be marked Number 94.

(Plaintiff's Exhibit No. 94 was marked for identification and is attached hereto.)

MR. DAN: Request 50, the paper entitled "Smoking and the Monoclonal."

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MRS. SPASLEER: He just marked it.

MR. DAN: It is all marked 94.

MRS. SPASLEER: And 51 and 52.

MR. DAN: All three of those have been marked 94?

MR. ROTHMAN: That is right.

MR. DAN: Do you have a distribution list, Request Number 52(a) for the papers mentioned in Requests Numbers 50, 51 and 52?

MR. ROTHMAN: That will be Exhibit 95.

(Plaintiff's Exhibit No. 95
was marked for identification
and is attached hereto.)

MR. DAN: Request Number 55, each of the booklets in the Tobacco History Series?

MR. ROTHMAN: What are we looking for?

MR. DAN: Each of the booklets in the Tobacco History Series.

MR. ROTHMAN: 95, South Carolina; 97, Illinois; 98, New York; 99, Kentucky; 100, Maryland; 101, Florida; 102, Wisconsin; 103, North Carolina; 104, Kansas; 105, Tennessee; 106, Massachusetts; 107, Virginia; 108, Pennsylvania; 109, Wisconsin; 110, Connecticut.

(Plaintiff's Exhibits No. 95
through 110 were marked for
identification and are attached
hereto.)

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BY MR. DAN:

Q Do you know if from the Tobacco History Series a publication was ever made for California, i.e., California and tobacco?

A No. None was ever made.

Q Do you know if these booklets were sent into California?

A No.

Q You don't know?

A I don't know.

Q Does a distribution list exist for these booklets?

A Not to my knowledge.

MR. DAN: 577

MR. ROTHMAN: 111.

(Plaintiff's Exhibit 111 was marked for identification and is attached hereto.)

MR. DAN: 587

MR. ROTHMAN: 58 is marked as 112.

(Plaintiff's Exhibit 112 was marked for identification and is attached hereto.)

BY MR. DAN:

Q These documents which we have just been marking, 96 through 112, for example, the booklets of the Tobacco History

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Series; the color brochures; Tobacco and American Industry; and Tobacco from Farm to Package; a full-size wall poster, are they available to the public free of charge?

A Yes.

Q Are they available to schools free of charge?

MR. ROTHMAN: I respectfully submit, counsel, that I don't know what the relevancy of that question is. I have no objection to your inquiring as to whether or not they are made available in California.

BY MR. DAN:

Q If you receive a request from the junior high school in California, in Los Angeles, requesting the Tobacco History Series, do you fulfill that request by sending them through the mail?

MR. ROTHMAN: I will object to that in its form. I think you are in the right area. The form is improper.

BY MR. DAN:

Q Have you ever received any requests for such publications from schools in California?

A I don't know.

Q Who would handle requests for Tobacco Institute publications such as those? The Tobacco History Series.

A The Librarian.

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Q Who is the librarian?

A Mrs. Cohen.

Q Has she always been the librarian or was there someone before her?

A There have been several.

Q Who were they, please? Who was before Mrs. Cohen?

A Mrs. Mary Louise Smith.

Q Is she still with the Tobacco Institute?

A No.

Q Do you know where she presently is?

A No. I don't.

Q Before Mary Louise Smith?

A Mrs. Marjorie Everett.

Q When did Marjorie Everett cease being the librarian?

A I can't remember.

Q Can you give me a ballpark date?

MR. ROTHEMAN: Counsel, let's see if we can make this easier for you. What you want to know is whether or not this witness has any knowledge, whether or not any of those documents went into California. She said she does not. I don't know what else we can do to help you with that subject.

MR. DAN: She says she doesn't know. She said the librarian is the one who does. I am asking who the librarians

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were.

MR. ROYMAN: It is obviously a conclusion. She wouldn't know who it is that may have responded to those. I am trying to help you without wasting a lot of time.

MR. DAN: Thank you.

BY MR. DAN:

Q Were there any other librarians, to your knowledge?

A Since the inception of the Institute?

Q Yes.

A Yes.

Q Do you know who they were?

A From memory, no.

Q Are these booklets supplied upon request to people, the Tobacco History Series?

MR. ROYMAN: I will object on the grounds it has no relevancy to the issue of jurisdiction.

MR. DAN: Assuming they are supplied upon request, it then can become reasonable to infer the request may come from the State of California.

MR. ROYMAN: Maybe there are requests from 30 states. It doesn't follow from requests from 30 states that there is a request from the State.

BY MR. DAN:

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Q Are these documents supplied upon request to people?

MR. ROTHMAN: In California?

MR. DAN: In general.

MR. ROTHMAN: I object on the grounds it is not relevant to the issues in question. I will instruct you not to answer.

I am not trying to foreclose you from going into any proper inquiry which deals with the jurisdiction in California. You have every right to do that. I have not made a single objection in that area.

MR. DAN: Our concepts with the area are different.

MR. ROTHMAN: That is probably true.

BY MR. DAN:

Q Are these documents supplied upon request to people from California?

MR. ROTHMAN: I will object to the form of that question. The question should be is she aware of any requests that came from California. If she answers that yes, you may ask her whether or not they were furnished free on request.

BY MR. DAN:

Q Is your answer yes?

MR. ROTHMAN: Do you know if any people in California made requests for these documents?

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THE WITNESS: No.

BY MR. DAN:

Q Do you know how many copies of these documents were printed?

MR. ROTHMAN: Objection. It is not relevant to the issue of the jurisdiction. I instruct the witness not to answer.

MR. DAN: Would the same instruction apply for the same other documents, the full-color brochure and the full-sized wall poster?

MR. ROTHMAN: The question as to how many of those were printed?

MR. DAN: Yes.

MR. ROTHMAN: Same objection and same instruction.

MR. DAN: Request Number 63? What did you produce in response to that?

MRS. PFABER: I want the record to show that we don't have 59. I think you just overlooked that one.

MR. ROTHMAN: 63 is marked as Exhibit 113.

(Plaintiff's Exhibit No. 113
was marked for identification and
is attached hereto.)

BY MR. DAN:

Q Request Number 89?

MR. ROTHMAN: 89 was given to you with 49.

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MR. DAN: With Request 49?

MR. ROTHMAN: Yes.

MR. DAN: Number 90?

MR. ROTHMAN: That was also given to you with 49.

Just so that is clear, we gave you all at one crack Requests 49, 50, 51, 52, 99 and 90. They all came to you in one crack.

MR. DAN: It is my understanding as to Request Number 92 there would be a stipulation that the items so appeared.

MRS. PFABLER: It did appear. It is so stipulated.

MR. DAN: 102?

MR. ROTHMAN: 102 was given to you in 13 and 13(a).

BY MR. DAN:

Q Have you produced any other documents here today pursuant to the requests that were served upon you?

MR. ROTHMAN: Pardon me?

BY MR. DAN:

Q Have you produced any other documents here today pursuant to the requests which were served upon you?

MR. ROTHMAN: No. We gave you everything you asked for. If you didn't ask for it, you didn't get it.

MR. DAN: In the notice of taking deposition on the oral examination and the production of documents and intangible things, there was a listing of 1 to 106 with various sub-parts.

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I am saying have you brought with you any other documents today pursuant to the request contained therein and not as articulated by me here orally?

MR. ROTHEMAN: I am not sure I understand.

MR. DAW: If I haven't asked for it, have you brought anything anyway that was pursuant to the document rather than my oral rendition?

MR. ROTHEMAN: I have got briefcases full of documents. You got what you ask for.

MR. DAW: I got what I ask for in the documents notice? I take it you have brought every document that I have requested in that document served November 24, 1972 as agreed upon in our subsequent correspondence?

MR. ROTHEMAN: No. That is not what we are saying. We are saying when you ask for something, you get it.

MR. DAW: When I asked for it orally here today. I am saying if I have missed something orally, but which was requested in the production of documents --

MR. ROTHEMAN: You are asking me now to see if you have done a good job.

MR. DAW: No. I am asking the witness and I am asking if you have any files left over.

MR. ROTHEMAN: You got what you asked for.

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MR. DAN: My asking for it was contained in the notice.

MR. ROSENMAN: That is right.

MR. DAN: As amended by the letters. It wasn't my oral statements here today.

MR. ROSENMAN: Counsel, we have been here since 9:30. What you are in effect saying to this witness is, "Miss Custodian, if I haven't done a good job, do you have anything more for me?" We are not going to give you that kind of an answer.

MR. DAN: I disagree. My understanding is you were, pursuant to the production of documents request and the stipulation and the letters and the agreements between my office and yours would make a reasonable and diligent and good faith search for said documents and produce them here today. Whether I have orally requested them at this time or whether I did it formally by way of a notice and subsequent correspondence to me is immaterial. The controlling document is the request, written, and our correspondence subsequent thereto is amending it.

MR. ROSENMAN: Counsel, let me explain something.

MR. DAN: Sure.

MR. ROSENMAN: If you request \$,000 in a notice to produce, and then you come to the deposition and don't ask for them, you don't get them. The purpose of the notice to produce

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was for us to be ready for your questions today. We have answered them. And have marked 113 documents.

MR. DAN: I take it you are instructing your witness not to answer the question?

MR. ROTMAN: No. I am saying the question is improper. I am not going to sit here to see if you did a good job. I haven't the slightest idea if you covered everything.

BY MR. DAN:

Q Have you brought any other documents here today that I have yet to orally ask you for?

A No.

Q The documents were brought pursuant to my request of you, written request?

MR. ROTMAN: She brought no other documents.

Mrs. Pfaelser is nicer than I am. You left out a whole category.

MRS. PFAELZER: You left out 101. Let's not walk around the problem. Mr. Dan is much too good a lawyer to have that happen to him.

MR. ROTMAN: We will mark that, Request 101 will be marked as Exhibit 114.

(Plaintiff's Exhibit No. 114 was marked for identification and is attached hereto.)

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MR. DAN: Thank you.

One item on the stipulation, let's take that first. That was Mr. Kornegay's speech. Remarks by William Kloeppfer, Junior Vice President, Public Relations, Tobacco Institute, before the Richmond Public Relations Association, Hotel John Marshall, November 25, 1979. That was Request Number 21. That was to be covered by the stipulation.

Is that authentic, true and correct?

MRS. PFABLER: Yes.

MR. ROTEMAN: Just a minute.

MR. DAN: We will take it out and mark it. We will mark it 115.

(Plaintiff's Exhibit 115 was marked for identification and is attached hereto.)

MR. ROTEMAN: You will, of course, tell us where it came from. No responses?

MR. BUTLER: I don't think this is the proper proceeding to ask that. We are not hiding anything from you. We are simply here identifying certain documents.

MR. ROTEMAN: Of course you are hiding something from us.

MR. BUTLER: Not in the least.

MR. ROTEMAN: It seems to me any fair minded man will

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say at the time you are discussing the authenticity of the document and whether it is true and correct ought to be the same time you are talking about where it came from. But if you don't see it that way, we will just have to proceed. I am shocked at your refusal to tell us where those documents came from.

MR. BUTLER: We are not prepared at this time to tell you where the documents came from. I don't want to make any representations in a proceeding, that this particular question was never discussed beforehand with counsel, then all of a sudden you make a request to ask us where we got the documents in the middle of a proceeding dealing with the identification.

MR. ROSENMAN: Mrs. Pfaltzer indicated she and Mr. Dan discussed this on two prior occasions.

It is beyond me. The documents didn't come out of a parachute dropped over the Pacific.

MR. BUTLER: How do you know?

MR. ROSENMAN: They are not wet.

MR. BUTLER: They could have come in a sealed container. Obviously documents can come from many sources. There is nothing in the preliminary arrangements for this particular proceeding where it was indicated that we were going to discuss that particular problem. We are not unprepared to discuss it at a future time if it becomes material.

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MR. ROSENMAN: When the deposition is over will you write us a letter telling us where these respective documents came from after we have had a chance to examine the facts? Will you do that for us?

MR. BUTLER: Let me answer that after we have had the opportunity to discuss it because it comes as a complete surprise to me, the request. I want to have the opportunity to give it some mature contemplation before I agree with it. That is all.

MRS. FRASER: I want the record to show that the request that I made to find out where the documents came from was made in the presence of approximately nine counsel, if not ten.

MR. ROSENMAN: Let's go.

MR. DAN: We will mark that last one. It was marked as 115.

MRS. FRASER: Counsel, we finished with 31. I suggest you call the number and I will tell you the answer.

MR. DAN: Fine.

MRS. FRASER: Please don't read the whole request.

MR. ROSENMAN: Are you through with the witness?

MR. DAN: No.

Number 337 May the record indicate whenever I say a

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number, it is for a request number.

MRS. PFANLEER: 32 and 32(a) and (b) are authentic and correct.

MR. HODMAN: Let's get them marked.

MRS. PFANLEER: You have to hand them to him to mark them as we go.

MR. SUTHER: My problem is I don't have a list to work from.

MRS. PFANLEER: Counsel, with respect to this stipulation, we want you to represent to us that the documents you are now marking came from Exhibit B or are exactly the same as Exhibit B.

MR. DAN: You were looking at our Exhibit B.

MRS. PFANLEER: So your answer is the documents you are now marking are exactly identical to those which appear in Exhibit B because if they are not, I can't make this representation to you.

MR. DAN: They are.

What is the next in order? 116 is a informational memorandum of February 3, 1970.

(Plaintiff's Exhibit No. 116 was marked for identification and is attached hereto.)

MR. DAN: We want the release of April 2, 1970.

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MR. BURRER: This is marked as 117.

(Plaintiff's Exhibit No. 117 was marked for identification and is attached hereto.)

(Discussion off the record.)

(I have read the foregoing pages 1 through 121, inclusive, which contain a correct transcript of the answers made by me to the questions therein recorded.)

KATHERYN REID GOLDEN.

CERTIFICATE OF NOTARY PUBLIC

I, Raleigh E. Milton, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

My Commission Expires:
September 1, 1976.

Notary Public in and for
the District of Columbia

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